

Notice of Allowability

Application No.

09/872,051

Examiner

David H Kruse

Applicant(s)

BEHR ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Response filed 11 July 2003.
2. ☒ The allowed claim(s) is/are 1-5, 15, 17 and 18 renumbered 1-5, 8, 6 and 7 respectively.
3. ☒ The drawings filed on 1 June 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>11/i4</u> . |
| 3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No. <u>03/03</u> | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Tom McBride on 14 November 2003.

The application has been amended as follows:

In the Specification as amended in the Amendment filed 11 July 2003, page 2, at pages 1 and 7, line 10 and 8 respectively, "priority from" has been amended to read -- benefit of --; at line 11 and 9 respectively "10," has been deleted.

The Title of the Invention as been replaced with -- A DNA CONSTRUCT HAVING TWO EXPRESSION CASSETTES EACH ENCODING A GLYPHOSATE TOLERANT EPEPS ENZYME A METHOD OF MAKING A GLYPHOSATE TOLERANT PLANT AND A GLYPHOSATE TOLERANT PLANT PRODUCED BY THE METHOD --.

The ABSTRACT of the invention has been replaced with the following:

-- The present invention provides a DNA construct having a first and a second expression cassette, wherein the first expression cassette has a rice actin 1 promoter, a rice actin 1 intron, a chloroplast transit peptide encoding DNA molecule, a glyphosate tolerant EPSPS encoding DNA molecule, and a transcriptional terminator DNA molecule; and the second expression cassette has a CaMV 35S promoter, a Hsp70 intron, a chloroplast transit peptide encoding DNA molecule, a glyphosate tolerant

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EPSPS encoding DNA molecule, and a transcriptional terminator DNA molecule. The invention also provides methods of using this DNA construct to make glyphosate tolerant plants, in particular glyphosate tolerant corn plants and corn event PV-ZMGT23(nk603) an example of which is deposited as ATCC Accession No PTA-2478.--

At claim 2, "A DNA" has been replaced with -- The DNA --.

At claim 4, "A plant" has been replaced with -- The plant --.

Claim 5(amended) A corn plant, or part thereof, [provided by] produced from seed deposited as ATCC [seed deposit] Accession No PTA-2478[, progeny seeds and plants or parts thereof].

Claim 15(amended) A method of producing a [corn] plant with increased tolerance to [that tolerates application of] glyphosate herbicide comprising:

(a) transforming a [corn] plant cell with the DNA construct of claim 1[;] and

[(b) selecting said corn cell for tolerance to application of glyphosate;]

(b) [(c) growing said corn cell into] regenerating a fertile transgenic [corn] plant[;]
from said plant cell, wherein said transgenic plant has increased tolerance to glyphosate compared to a non-transgenic plant.

Claim 17(new) Transgenic seed produced from the plant of claim 5.

Claim 18(new) A transgenic plant, or part thereof, grown from the seed of claim

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Kruse, Ph.D. whose telephone number is (703) 306-4539. The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Amy Nelson can be reached at (703) 306-3218. The fax telephone number for this Group is (703) 872-9306 Before Final or (703) 872-9307 After Final.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (703) 308-0196.

David H. Kruse, Ph.D.
14 November 2003

A handwritten signature in cursive script, appearing to read "Amy Nelson".

AMY J. NELSON, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600